

ORDER SHEET

WPO/903/2022
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

M/S. G. K. SONI HOUSING AND DEVELOPMENT PRIVATE LIMITED
Versus
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date : 21st June, 2022

Appearance:

Mr. Uday Narayan Betal, Adv.
For petitioner
Mr. Aloke Kr. Ghosh, Adv.
Mr. Arijit Dey, Adv.
For Kolkata Municipal Corporation

The Court: Affidavit of service filed today is taken on record.

In this matter the petitioner has prayed for delisting the premises no.34, Kali Krishna Tagore Street, Kolkata from the list of heritage properties pending gradation. The said property is included in the list of Kolkata Municipal Corporation for their gradation by proper technical experts either by the Heritage Commission to be set up or by the Kolkata Municipal Corporation Heritage Conservation Committee. The buildings in the said list are not to be demolished by the owners under any circumstances, though any plan made for changes should be processed by appropriate body.

The list contains the house address, a separate column for description and a further column to mention the special feature of the premises in question. In respect of the petitioner's premises i.e. 34, Kali Krishna Tagore Street, there is neither any description nor any special feature mentioned for inclusion of the building in the list for gradation to be done in respect of the heritage building.

The petitioner submits that in respect of a separate premises being 31/1/S, Nayanchand Dutta Street, described as Krishna Palace, the Court was pleased to interfere and pass necessary orders. The petitioner contends that as the aforesaid premises i.e. Krishna Palace and the premises of the petitioner included in the self-same list, one as serial no.218 and the other as serial no.275, lie on the same footing, the order passed in the matter of Krishna Palace may be passed in the present case.

Learned advocate representing the Kolkata Municipal Corporation opposes the prayer of the petitioner. It has been submitted that a public interest litigation being WPA 12676 (W) of 2019 in the matter of INTACH (India National Trust for Art and Cultural Heritage) and Anr. Vs. State of West Bengal and Ors.) with regard to heritage properties is pending consideration before the Hon'ble Division Bench.

It has been submitted that as the list in question where the building of the petitioner is included is under consideration before the Hon'ble Division Bench, no order need be passed in the present writ petition. The petitioner may apply before the Hon'ble Division Bench for necessary order.

It has further been submitted that by an order dated 26th July 2019 passed in the aforesaid writ petition by the Hon'ble Division Bench, the

Court was pleased to pass an interim order granting reliefs in terms of prayers (j) and (k). Prayers (j) and (k) of the writ petition being WPA 12676 of 2019 is as follows:-

“ j) An order of injunction restraining the respondents above named and/or each one of them from giving any effect to any decision of downgrading/delisting any other buildings during the pendency of this instant writ petition.

k) An order of injunction restraining the respondents above named and/or each one of them from causing any demolition of any building that has been downgraded/delisted or any demolition whatsoever of any building that was once declared as heritage building and has now presently been downgraded/delisted during the pendency of this instant writ petition.”

It has been contended that the said writ petition is pending before this Hon’ble Court and the said interim order dated 26.07.2019 is still in force.

The Court in the order dated 30th March, 2022 passed in the aforesaid PIL recorded that the cause sought to be espoused by the writ petitioners in this public interest litigation, inter alia, is that arbitrarily the Heritage Conservation Committee had been downgrading and de-listing buildings which were initially declared as heritage buildings. As a result of this decision, owners of the some of the buildings were quickly demolishing them or changing their nature and character.

The Court was pleased to hold that “We direct that there would be no impediment to individual writ applications or any other proceeding by the said parties proceeding in their own way. Should in the course of hearing of the public interest litigation any enquiry is made by this Court which would directly touch 16, U.N. Brahmachari Street or 24, Ballygunge Circular Road property, it would be open for the writ petitioners in the public interest

litigation to apply before the writ Court or any other forum where a writ or proceeding by an individual may be pending, to stay the proceeding as is done by an applicant, applying for stay under Section 10 of the Code of Civil Procedure. Unless and until this course is adopted by the writ petitioners herein, individual litigation or other proceedings by the above parties may proceed.

In those circumstances, the interim order dated 26th July, 2019 is vacated with regard to its application to the above two buildings.”

The petitioner is admittedly not a party in the public interest litigation that has been filed. The cause of action for filing the PIL also appears to be grossly different from the cause of action for filing the present writ petition.

The PIL has been filed challenging the action on the part of the authority to delist or downgrade properties from the list of heritage buildings. Such is not the case here. In the present case the petitioner has filed the petition praying for removal of his premises from the list of heritage buildings on the ground that the same was not done in accordance with the provisions of law.

The Court in the matter of Krishna Palace being **W.P. No. 479 of 2017 (Yusuf Khan Vs. The State of West Bengal & Ors.)** in the judgment dated 30th August, 2019 took into consideration the provisions of Sections 425B, 425C and 425D of the Kolkata Municipal Corporation Act, 1980. The Court was of the opinion that “a conjoint reading of the aforesaid provisions suggests that it is the statutory duty of the Committee to scrutinize every application or proposal for declaration of the building as heritage. There is nothing on record to show that either the Heritage Conservation Committee

or the Mayor in Council scrutinized the application or proposal for declaration of the building in question as heritage. Records do not indicate that the KMC came to an independent finding that the structure of the premises in question is such that the same is worth incorporating in the list of heritage buildings.”

The Court observed that grading of heritage building is done as per Section 425C and not Section 425B. The Court was of the opinion that inclusion of the building of the petitioner in the list of heritage buildings, not being made in accordance with the provisions of Section 425B of the Kolkata Municipal Corporation Act, 1980, is absolutely illegal and not tenable in law. The Court passed order by directing the Kolkata Municipal Corporation to remove the building from the heritage list.

The judgment passed by the learned Single Judge was carried in appeal by the Kolkata Municipal Corporation.

By a judgment dated 25th March, 2021 the Hon’ble Division Bench made it clear that the judgment of the learned Trial Judge dated 30th August, 2019 shall be read as applicable to the facts of the said building alone in issue in the writ petition.

It appears that the facts of the present case are similar to the facts of the case in the matter of Yusuf Khan (supra). The order passed by the learned Trial Judge was modified to some extent by the Hon’ble Division Bench but otherwise the judgment has been upheld by the Hon’ble Division Bench. There is no reason as to why the same principle, as laid down in the matter of Yusuf Khan (supra) cannot be made applicable in case of the petitioner herein.

The Hon'ble Division Bench in the matter of INTACH (supra) by order dated 30th March, 2020 clarified that there would be no impediment to individual writ applications or any other proceeding by the parties in their own way. As the petitioner is not a party to the public interest litigation and as the Hon'ble Division Bench permitted individual applications to be taken up for consideration independently, accordingly, the submission of the learned advocate appearing for the Corporation that the petitioner ought to approach the Hon'ble Division Bench in the pending public interest litigation does not appeal to the Court.

Accordingly, it is held that the inclusion of the building of the petitioner being premises no.34, Kali Krishna Tagore Street, Kolkata in the list of heritage buildings not being made in accordance with the provisions of Section 425B of the Kolkata Municipal Corporation Act, 1980 is illegal and not tenable in law.

As a consequence hereof, the Kolkata Municipal Corporation is directed to remove the property being premises no. 34, Kali Krishna Tagore Street, Kolkata from the heritage list maintained by Kolkata Municipal Corporation.

It is made clear that if in future the Heritage Conservation Committee comes to an independent finding that the building in question deserves posting in the heritage list, then it will take steps in accordance with the Act and the Rules framed thereunder.

The writ petition, accordingly, stands disposed of.

Affidavit-in-opposition and affidavit-in-reply filed be retained with the records.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of usual legal formalities.

(AMRITA SINHA, J.)

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